



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAUDY GUERRERO,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

7:19-CR-0768-09 (VB)

7:23-CV-4525 (VB)

TRANSFER ORDER

VINCENT L. BRICCETTI, United States District Judge:

Movant Saudy Guerrero, who is currently incarcerated in the Federal Correctional Institution (Gilmer), in Glenville, West Virginia, brings this *pro se* motion under 28 U.S.C. § 2255, challenging his conviction and sentence entered in *United States v. Guerrero*, ECF 7:14-CR-0768, 303 (S.D.N.Y. Jan. 29, 2018). For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

Court records show that Movant filed a previous motion for relief under Section 2255, challenging the same judgment of conviction, which was denied on the merits. *Guerrero v. United States*, Nos. 19-CV-4130, 14-CR-0768-09, 2021 WL 3172985 (S.D.N.Y. July 26, 2021). Because Movant's previous Section 2255 motion was decided on the merits, the present Section 2255 motion is a second or successive one. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998).

Before a second or successive Section 2255 motion is filed in the district court, authorization from the appropriate court of appeals is required. 28 U.S.C. §§ 2244(b)(3)(A),

2255(h). Movant must therefore move in the United States Court of Appeals for the Second Circuit for permission to pursue the present Section 2255 motion.¹

CONCLUSION

In the interest of justice, the Court directs the Clerk of Court to transfer the present Section 2255 motion, as a second or successive Section 2255 motion, to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996). This order closes this civil action in this court. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this action under this civil docket number (7:23-CV-4525 (VB)).

As the present motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 6, 2023
White Plains, New York



VINCENT L. BRICCETTI
United States District Judge

¹ Movant must demonstrate to the Court of Appeals that the present Section 2255 motion is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* § 2255(h).